Supreme Court, U.S.
FILED
OCT 15 1993
OFFICE OF THE CLERK

No. 93-434

In The

Supreme Court of the United States

October Term, 1993

SUSAN R.M., BY HER NEXT FRIEND, CHARLES L.M.,

Petitioner Pro Se,

vs.

NORTHEAST INDEPENDENT SCHOOL DISTRICT, A SUB-DIVISION OF THE TEXAS EDUCATION AGENCY,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Now comes Respondent North East Independent School District[1] ("NEISD") and files this Brief in Opposition to the

1. The correct name of the Respondent school district is as stated above. Moreover, while North East Independent School District is subject to regulations of the Texas Education Agency, it is not a "sub-division" of that agency, but, rather, is an independent subdivision of the State of Texas. *E.g., Port Arthur Indep. Sch. Dist. v. City of Groves,* 376 S.W. 2d 330, 333 (Tex. 1964); *Watts v. Double Oak Indep. Sch. Dist.,* 377 S.W. 2d 779, 780 (Tex. Civ. App. – Fort Worth 1964, no writ).

Petition for Writ of Certiorari of Petitioner, Charles L.M. and would respectfully show the Court as follows:

STATEMENT OF THE CASE

NEISD notes that Petitioner failed to comply with Rule 14(f) of the Rules of the Supreme Court of the United States. Moreover, Petitioner included in his statement considerable superfluous information that is not in the record of this cause. As a result, NEISD is compelled to present a concise statement of the pertinent and material facts and proceedings, as such appear of record.

This is the third suit Petitioner has filed *pro se* as a next friend of his daughter, Susan R.M., against NEISD and the Texas Education Agency ("TEA"). R. 447; *see Charles L.M. v. North East Independent School Dist.*, 884 F.2d 869 (5th Cir. 1989); *Susan R.M. v. North East Independent School District*, 818 F.2d 455 (5th Cir. 1987). A brief review of these three suits is necessary.

A. First Suit.

In May, 1985, Petitioner filed the first suit against NEISD and TEA in which he sought placement of his daughter in a residential treatment facility at the expense of NEISD and damages for expenses incurred in his daughter's private treatment. *Susan R.M.*, 818 F.2d at 457. While this first suit was pending, deterioration in Susan R.M.'s emotional condition led to an immediate need for her placement in a psychiatric hospital. *Id.* To facilitate placement, Petitioner obtained court appointment of the Texas Department of Human Services as Susan R.M.'s managing conservator. *Id.* The Department became managing conservator on February 12, 1986 and placed Susan R.M. at the Waco Center for Youth on May 13, 1986, where she was treated at public expense. *Id.*

This first lawsuit was dismissed by the district court because it was moot and because Petitioner lacked standing. *Id.* The case was

moot because Susan R.M. had moved outside the boundaries of NEISD; Petitioner lacked standing because the Department of Human Services became managing conservator of Susan R.M. and, thus, had the exclusive right to bring actions on her behalf. *Id.* The Court of Appeals for the Fifth Circuit affirmed the district court's dismissal on the ground that Petitioner lacked standing. *Id.*

In its opinion, the Fifth Circuit wrote: "because Charles L.M. is proceeding *pro se,* we note some of the issues that might arise were he in the future to obtain standing." *Id.* The court noted that Susan R.M. has a right to public education from NEISD only if the State has placed her within the boundaries of that school district. *Id.* Further, as of August 18, 1987, when Susan R.M. reached the age of 18, she would no longer be under either State or parental custody and her father, thereafter, would not have standing to represent Susan R.M. unless he showed her to be incompetent and was appointed as her guardian as required under Fed. R. Civ. P. 17(c). *Id.* The court further noted that the State, under Texas Education Code, § 21.031(b) and under the EAHCA (now IDEA) had a duty to provide public education to Susan R.M. until she reached the age of 21. *Id.* Finally, the court advised Petitioner that even if he became Susan R.M.'s guardian giving him standing in federal court, he could bring suit for Susan R.M.'s education only against the school district in which she then legally resided. *Id.* Ultimately, the court advised that the only claim the Petitioner could pursue, unless he later became Susan R.M.'s guardian, was a claim for reimbursement of private hospitalization expenses incurred while Susan R.M. was at a private hospital from June of 1985 through January of 1986. *Id.*

B. Second Suit.

On December 17, 1987, Petitioner filed a second lawsuit against NEISD and TEA on his daughter's behalf. *Charles L.M.*, 884 F.2d at 869. The district court dismissed this second suit for insufficient service of process. *Id.* The Fifth Circuit Court of

Appeals dismissed Petitioner's appeal for failure to timely file a notice of appeal. *Id.*

C. Third Suit.

On October 23, 1989, Petitioner filed this third lawsuit, which is currently before this Court. R. 446-497. Petitioner alleged that "the Plaintiff files this legal action as a next friend of his daughter Susan R.M. who resided with him until her 18th birthday on August 18, 1987." R. 446-447. Petitioner further alleged that "Susan R.M. . . . has been living independently since her 18th birthday which occurred on August 18, 1987." R. 448. Petitioner did not allege that Susan R.M. then lived within the boundaries of NEISD. R. 446-497. Nor did Petitioner allege that he was ever appointed Susan R.M.'s legal guardian. *Id.*

In response to Petitioner's complaint, TEA timely filed a Motion to Dismiss Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on November 15, 1989, arguing that Petitioner's claim was barred by the doctrines of *res judicata* and collateral estoppel, due to the Fifth Circuit's previous finding that Petitioner lacked standing to bring this action, and that Petitioner's claims were barred by the statute of limitations. R. 390-408. Defendant NEISD timely filed its Answer on November 15, 1989, which also alleged these defenses. R. 409-434. On November 22, 1989, Petitioner filed his response to TEA's motion to dismiss. R. 374-379.

On November 20, 1989, pursuant to 28 U.S.C. § 636(b)(1), the district court entered an order referring this action to Magistrate Judge Primomo to hear and determine pretrial matters and to make recommendations on other matters. R. 385. Magistrate Judge Primomo recommended to District Judge Garcia that Petitioner's complaint be dismissed on the basis of res judicata, lack of standing and limitations. R. 164-171. The order clearly advised Petitioner of his right to appeal within 10 days. R. 171. The case

was then transferred back to the district court. R. 163. On May 28, 1991, Petitioner filed an objection to Magistrate Judge Primomo's recommendation. R. 127-162.

On April 2, 1992, District Judge Garcia entered an order adopting Magistrate Judge Primomo's recommendations regarding the dismissal of Petitioner's complaint. R. 24-28. Thus, this third case was dismissed without prejudice. R. 24. By judgment dated June 4, 1993, the United States Court of Appeals for the Fifth Circuit affirmed this judgment of the District Court. Pet. at A-15.

REASONS FOR DENYING THE WRIT

Petitioner's petition largely consists of disembodied quotes from inapplicable authorities, unrelated to any facts and, hence, response is difficult. Nevertheless, NEISD has diligently attempted to devine Petitioner's complaints and to cogently respond to them in the order they appear in the petition.

I.

PETITIONER LACKED STANDING TO SUE.

The Fifth Circuit held that Petitioner had no standing to sue for his minor daughter while she was subject to the managing conservatorship to which he consented, or after she turned 18 and had not been declared mentally incompetent. Pet. at A-4 - A-5. Petitioner here asserts "that loss of standing and standing to sue are two separate legal issues." Certainly, the standing issue upon which the Fifth Circuit affirmed the dismissal of this cause, and that is now asserted by Petitioner, *citing Sierra Club, Baker,* etc. are different. The cases cited by Petitioner have no relevance to any issue in this case. Those cases address the quality and quantity of the Petitioner's personal stake in the cause. Pet. at 20-21; *see, e.g.,*

Sierra Club v. Morton, 405 U.S. 727, 732 (1972). This case, however, concerns *who* is entitled to bring the claim. *See, e.g., United States Dept. of Labor v. Triplett*, __ U.S. __, 110 S. Ct. 1428, 1431 (1990). A plaintiff "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Id., quoting, Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982).

The claims asserted by Petitioner, with the possible exception of claims for reimbursement of support payments to the managing conservator and the payments to Park North Hospital, are claims of a third party, not of Petitioner. The court of appeals correctly decided this question, and certiorari should not be granted. Pet. at A-4 - A-5; *see Susan R.M. v. North East Indep. Sch. Dist.*, 818 F.2d 455, 458 (5th Cir. 1987).

II.

PETITIONER'S CLAIMS ARE BARRED BY LIMITATIONS.

In his limitations claims (Pet. at 21-24), while it is not at all clear, Petitioner apparently asserts that his claims for reimbursement for payments to Park North Hospital from June, 1985 until January, 1986, and to the managing conservator, from January 12, 1986 until August 18, 1987, are not barred by limitations. R. 27, 168-69, 446, 458-59, 486-87. This suit was filed October 10, 1989.

The Fifth Circuit, relying on *Scokin v. Texas*, 723 F.2d 432, 438 (5th Cir. 1984), applied the Texas two-year statute of limitations and held that these claims were barred by limitations. Pet. at A-5. The court also addressed the issue Petitioner now raises, that limitations is tolled during the child's minority. *Id.* at A-

6. The court held such fact, if true, is irrelevant because Petitioner had no standing to "assert his adult daughter's claims," even those that arose while she was a minor. *Id.*

Petitioner has not challenged the applicability of the Texas two-year statute of limitations or the *Scokin* rule before this Court; he asserts only that the limitations statute was not properly applied because the statute was tolled during his daughter's minority and during her hospitalization. Pet. at 21-24. Petitioner cites no authority to support this assertion, undoubtedly because the authority, including an express provision of the statute cited by Petitioner, is to the contrary.

To reach his desired result, Petitioner asserts that limitations is tolled until his daughter's eighteenth birthday, plus an additional 193 days, the period she was hospitalized at Park North Hospital. The statute Petitioner cites, section 16.001 of the Texas Civil Practice and Remedies Code, further provides "(c) a person may not tack one legal disability to another to extend a limitations period." Tex. Civ. Prac. & Rem. Code Ann. § 16.001 (c) (Vernon 1986). This provision expressly prohibits the method Petitioner asserts to extend the limitations period. *Id.; see, e.g., Cities Service Oil Co. v. Green,* 251 S.W. 2d 906, 908 (Tex. Civ. App. - Texarkana 1952, writ ref'd n.r.e.). Hence, limitations ran on the claims, at the latest on August 17, 1989, and Petitioner's October 10, 1989 action was barred by limitations.

Petitioner has made no differentiation between the claims he asserted for his daughter and those he brought for himself (perhaps, the claims for reimbursement for payments to Park North Hospital and to the managing conservator). As previously shown, any claim of his daughter's which Petitioner brought in his name, is barred by Petitioner's lack of standing, irrespective of limitations. Any claim he brought for himself is barred by the two-year statute of limitations without reference to his daughter's minority. The

claim for reimbursement for the Park North hospitalization accrued, at the latest, upon Petitioner's daughter's discharge in January, 1986, while any claim for reimbursement of payments to the managing conservator accrued, at the latest, upon the daughter attaining majority and the termination of the conservatorship on August 18, 1987. Hence, both claims asserted by Petitioner in his suit filed October 10, 1989, are barred by limitations.

The cases cited by Petitioner are unavailing and have no relevance; the Fifth Circuit's holding in this case is certainly not in conflict with any of those cases. Pet. at 21-24, 27-29. In the *Cox* case, the court recognized the Texas statute of limitations is tolled by the minority of the plaintiff. *Cox v. McDonnell-Douglas Corp.*, 665 F.2d 566, 572 (5th Cir. 1982). There is no dispute in this regard, but, further, the same statute prohibits tacking one disability onto another to further extend the period of limitation tolling. Tex. Civ. Prac. & Rem. Code Ann. § 16.001 (c). There is no conflict between this cause and *Cox* and Petitioner's daughter's claim is barred by limitations. In the *Landreth* case, a case under the Federal Tort Claims Act, the court held that "[t]he fact of minority does not toll the statute [of limitations]." *Landreth v. United States,* 850 F.2d 532, 534 (9th Cir. 1988). Petitioner offers no explanation as to how this authority aids his cause and, indeed, it does not. Pet. at 22. Nor does the Fifth Circuit's holding in this case conflict with *Landreth. See id.* at 27-29. In *Shook,* the court applied a "borrowed" statute of limitations and the state rules on tolling in the same way the Fifth Circuit applied such in this case. *See Shook v. Gaston County Bd. of Educ.*, 882 F.2d 119, 121-22 (4th Cir. 1989). In other words, *Shook* supports the Fifth Circuit's holding in this case, rather than conflicting with it. The Fifth Circuit correctly decided this issue, and certiorari should be denied.

III.

WRITTEN CONSENT IS NOT REQUIRED TO REFER PRETRIAL MATTERS TO MAGISTRATE JUDGE.

Petitioner's argument regarding referral of pretrial matters to the magistrate judge mixes apples with oranges and gets a lemon; his error is apparent on the face of the petition. Pet. at 24. Petitioner acknowledges that the case was referred to the magistrate judge pursuant to 28 U.S.C. § 636(b)(1), yet Petitioner cites and argues only subsection (c) (1) of the statute. Pet. at 24. The cases cited by Petitioner support his irrelevant section 636(c)(1) argument, but provide no support for the assertion (which Petitioner does not make) that the magistrate judge was without authority to act as he did herein under section 636 (b)(1). *See Clark v. Poulton*, 914 F.2d 1426, 1431 (10th Cir. 1990); *Archie v. Christian*, 808 F.2d 1132, 1137 (5th Cir. 1987) (en banc). To the extent that *Clark* and *Archie* discuss section 636 (b), they discuss only prisoner petitions, not a magistrate judge's authority in civil cases. *Clark*, 914 F.2d at 1430-31; *Archie*, 808 F.2d at 1135-36.

Noting that Petitioner never objected to the referral of the case to the magistrate judge, the Fifth Circuit reviewed only for plain error and found none. Pet. at A-7. The holding of the court was correct and certiorari should be denied.

IV.

THERE WAS NO ERROR IN NOT GRANTING EQUITABLE RELIEF.

Petitioner vaguely and generally invoked equity, seemingly asserting "if I make mistakes, equity makes them right." He sought no specific equitable relief, nor invoked any particular equitable principle. Likewise, he fails to articulate any specific failure to

apply equitable principles or to grant equitable relief in this Court.

The only authority Petitioner cites in support of his assertion in this Court is wholly inapplicable and in no way aids Petitioner's cause. *See Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, 265 (1946). The court did not discuss, much less decide, any equity question. *Id.* The specific discussion to which Petitioner cites deals with damages and is no way concerned in this cause. *Id.* The court there held, in effect, that where an invasion of the Plaintiff's right is proven, damages are recoverable despite difficulty in the ascertainment of the amount of such damages. *Id.* No issue about the amount of damages or the difficulty of ascertaining such amount is raised or asserted in this cause.

The Fifth Circuit correctly responded to Petitioner's equity assertion. Moreover, there is no conflict between the Fifth Circuit's holding and the *Bigelow* case.

V.

PETITIONER HAS DEMONSTRATED NO CONFLICT WITH ANY DECISION OF THIS COURT OR ANY CIRCUIT COURT.

Petitioner asserts that the Fifth Circuit's decision conflicts with decisions of this Court and other courts of appeals. Pet. at 26-29. Petitioner has failed to specifically identify any such alleged conflicts and has not explained and supported with authority any such claims. *Id.* Nevertheless, Respondent has refuted Petitioner's claims, showing that Petitioner's assertions are wrong and none of the purported conflicts exist. Specifically, NEISD refuted Petitioner's claim of conflict with *Sierra Club* and *Singleton* in section I hereof; with *Landreth, Shook* and *Clark* in section II hereof; with *Bigelow* in section IV hereof. *Ex parte Young* was relied upon by Petitioner only in response to TEA's claim of

immunity. NEISD did not raise that claim and has not addressed it herein. Finally, Petitioner cited *Kimbell Foods* in support of the proposition that if applying state law to the operation of federal programs would frustrate the objects of those programs, "courts must fashion special rules solicitous of those federal interests." Pet. at 19; *see United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728-29 (1979). In *Kimbell Foods,* the court considered "whether contractual liens arising from certain federal loan programs take precedence over private liens, in the absence of a federal statute setting priorities." *Kimbell Foods,* 440 U.S. at 718. The court adopted state law as the appropriate federal rule for establishing the priority of these competing federal and private liens. *Id.* Petitioner in no way explains how the referenced holding or any aspect of the *Kimbell Foods* case aids his argument or is even relevant to it. NEISD can discern no application whatsoever, and asserts that the *Kimbell Foods* case has no bearing on the decision in this cause. Respondent will not prolong this response by discussing the cases cited by Petitioner in sections V and VI of his petition, since those cases are utterly irrelevant. *See* Pet. at 26-29.

CONCLUSION

Petitioner has demonstrate no error in the judgment of the Court of Appeals and, indeed, his assertions are frivolous and wholly without merit. Petitioner's petition for writ of certiorari, therefore, should be, in all things, denied.

Respectfully submitted,

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